

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**September 28, 2005**

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Mallano, J., Rothschild, J. and S. Stahl, Deputy Clerk.

B179379      County of Los Angeles v. Harco National Insurance, Co.

Argument waived, cause submitted.

B181091      Freeman  
                 v.  
                 King et al.

Merits:

Argued by Nick Alden for appellant and by Robin Campbell for respondent Wachovia. No appearance by Donald S. Sherwyn for respondent King. Cause submitted.

B177790      Laserson  
                 v.  
                 Louis Dewitt et al.

Merits:

Argued by David Highman for appellant and by Mark Kane for respondents. In open court attorney Highman moves that Bruce Laserson, as personal representative, to be joined as appellant with the Estate of Andrea Marcus. Said motion is granted without opposition. Cause submitted.

September 28, 2005 (Continued)

## DIVISION ONE (Continued)

B167155      Gray Stone & Company, Inc. et al.  
v.  
Vigilant Insurance Co. et al.

Merits:

Argued by Bruce A. Friedman for appellants and by Richard G. Del Mora for respondents. Cause submitted.

B172647      Gattuso et al.  
v.  
Harte-Hanks, Inc.

Merits:

Argued by Kathleen M. Kushi Carter for appellants Gattuso et al and by  
Raymond R. Kepner for respondent Harte-Hanks. Cause submitted.

Court adjourned.

B178648 People (Not for Publication)  
v.  
Phillip W. Rawl

The judgment is affirmed.

Rothschild, J.

We concur: Spencer, P.J.  
Mallano, J.

September 28, 2005 (Continued)

## DIVISION ONE (Continued)

B177572      People      (Not for Publication)  
v.  
Ubaldo Espino Moreno

The appeal is dismissed.

Rothschild, J.

We concur:   Mallano, Acting P.J.  
                      Vogel (Miriam A.), J.

DIVISION TWO

B169573      Heineke, et al.      (Not for Publication)  
v.  
Evans

The order denying the Heinekes' motion for attorney fees is reversed. Upon remand, the trial court shall determine whether the Heinekes mediated or attempted to mediate before suing Evans. If they did, they are entitled to recover their reasonable attorney fees. If they did not, then the trial court shall exercise its discretion in deciding whether to award attorney fees. The parties shall bear their costs on appeal.

Ashmann-Gerst, J.

We concur: Boren, P.J.  
Suzukawa, J. (Assigned)

B176869 People (Not for Publication)  
v.  
Studnicka

The judgment is affirmed.

Doi Todd, Acting P.J.

We concur:   Doi Todd, Acting P.J.  
                    Ashmann-Gerst, J.

September 28, 2005 (Continued)

## DIVISION TWO (Continued)

[illegible]

The judgment is affirmed.

Doi Todd, J.

We concur: Boren, P.J.  
Ashmann-Gerst, J.

B173855 People (Not for Publication)  
v.  
Hurtado

The judgment is modified to strike the 10-year gang enhancement in count 1 and to impose instead a 15-year minimum parole eligibility date. In all other respects, the judgment is affirmed. The superior court is directed to correct the minute order and the abstract of judgment and to forward a copy of the corrected abstract to the Department of Corrections.

Ashmann-Gerst, J.

We concur:   Doi Todd, Acting P.J.  
                      Ashmann-Gerst, J.

B175949      Snowden      (Not for Publication)  
v.  
Kemper Employers Claims Services

The judgment is affirmed. Kemper shall recover its costs on appeal.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                  Doi Todd, J.

## DIVISION TWO (Continued)

B180369 People (Not for Publication)  
v.  
Brooks

The conviction of receiving stolen property is reversed and that count is dismissed. The judgment is modified to reflect that the concurrent sentence for grand theft of personal property is stayed pursuant to section 654, the stay to become permanent upon completion of service of the sentence for burglary. In all other respects, the judgment is affirmed.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                      Doi Todd, J.

B181499      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Robert S.

The order of the juvenile court terminating father's parental rights is reversed. The matter is remanded to the juvenile court with the following directions. The court is to order DCFS to provide each of the three Cherokee tribes with proper notice of further proceedings pursuant to the ICWA. If, after receiving proper notice, no tribe determines the minor is an Indian child, the juvenile court shall reinstate the order terminating parental rights.

Ashmann-Gerst, J.

We concur:   Boren, P.J.  
                  Doi Todd, J.

DIVISION THREE

[illegible]

The judgment is affirmed.

Aldrich, J.

We concur:   Croskey, Acting P.J.  
                    Kitching, J.

B173899 Alexander, et al.  
v.  
City of Los Angeles

Filed order vacating submission order of June 14, 2005. Due to the press of court business and the complexity of the issues in this case, additional time is needed to complete and file the opinion in this matter. Cause resubmitted.

B176017 People (Not for Publication)  
v.  
Tolentino

The judgment is affirmed.

Aldrich, J.

We concur:   Croskey, Acting P.J.  
                  Kitching, J.

### DIVISION THREE (Continued)

[illegible]

The true findings on the prior conviction allegations pursuant to section 667, subdivision (a)(1) and 667, subdivisions (b) - (i) and 1170.12, subdivisions (a) - (d) are reversed, and the sentence is vacated. The matter is remanded for a retrial on the prior conviction allegations should the People elect to retry them, or for a new sentencing hearing if the People elect not to retry the prior conviction allegations. In all other respects, the judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

DIVISION FOUR

B172142 People (Not for Publication)  
v.  
Cardwell

The judgment is affirmed.

Hastings, J.

We concur: Epstein, P.J.  
Willhite, J.

DIVISION SIX

B181570      Human Resources Agency                      (Not for Publication)  
                 v.  
                 Christina R.

The orders of the juvenile court are affirmed.

Gilbert, P.J.

We concur:   Yegan, J.  
                 Coffee, J.

B167710      People    (Not for Publication)  
                 v.  
                 Butler

The judgment is affirmed.

Gilbert, P.J.

We concur:   Yegan, J.  
                 Coffee, J.

B179375      People    (Not for Publication)  
                 v.  
                 Montoya N.,

The order of wardship is affirmed.

Perren, J.

We concur:   Gilbert, P.J.  
                 Coffee, J.



September 28, 2005 (Continued)

## DIVISION SIX (Continued)

B181105 People v. Adams (Not for Publication)

The judgment is affirmed.

Perren, J.

We concur:   Gilbert, P.J.  
                      Coffee, J.

B177214      Debien      (Not for Publication)  
v.  
Countrywide Home Loans, Inc.,  
Clara Freeman, et al.,

The judgment is affirmed. Costs to respondents.

Yegan, J.

We concur: Gilbert, P.J.  
Perren, J.

## DIVISION SEVEN

B172083 Colleen M. (Certified for Publication)  
v.  
Fertility and Surgical Associates of Thousand Oaks

The judgment is affirmed. Each party to bear their own costs.

Johnson, J.

We concur: Perluss, P.J.  
Zelon, J.

September 28, 2005 (Continued)

DIVISION SEVEN (Continued)

B174473 People v. Davis (Not for Publication)

The judgment is affirmed.

Johnson, J.

We concur: Perluss, P.J.  
Zelon, J.

## DIVISION EIGHT

Each of the following:

B172366	Prieto v. Loyola Marymount University
B176864	Fe Nachor et al. v. City of Los Angeles
B171090	Tire Distributors, Inc. v. Gary R. Cobrae
B177082	Tire Distributors, Inc. v. A-Line Construction & Engineering, Inc. et al.

Filed order denying petition for rehearing.

B175361 People (Not for Publication)  
v.  
Gutierrez

The enhancement for court two is stricken. The trial court is directed to issue an amended abstract of judgment omitting this enhancement and noting that the enhancement for count one was imposed under Penal Code section 12022.53, subdivisions (d) and (e). In all other respects, the judgment is affirmed.

Boland, J.

We concur: Cooper, P.J.  
Flier, J.

DIVISION EIGHT (Continued)

B174094      Walter Jitner                      (Not for Publication)  
                 v.  
                 Kamram Amiri et al.,

The judgment of dismissal is affirmed. The respondents shall recover their costs and attorney fees on appeal, the amount of which shall be determined by the trial court.

Cooper, P.J.

We concur: Rubin, J.  
                 Boland, J.

B176008      People                                      (Not for Publication)  
                 v.  
                 Marquette Scott

The case is remanded for reconsideration of consecutive sentencing. In all other respects, the judgment is affirmed.

Cooper, P.J.

We concur: Rubin, J.  
                 Boland, J.